IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA BRUNSWICK DIVISION

TERRY COLEY,

Petitioner.

VS.

CIVIL ACTION NO.: CV211-125

ANTHONY HAYNES, Warden,

Respondent.

ORDER

Petitioner Terry Coley ("Coley") filed Objections to the Magistrate Judge's Report dated September 27, 2011, which recommended that Coley's 28 U.S.C. § 2241 petition be dismissed. In his Objections, Coley argues that: (1) 28 U.S.C. § 2255 was an inadequate or ineffective remedy to test the legality of his detention, thus entitling him to pursue relief under § 2241, and (2) a fundamental error in his underlying criminal case resulted in cruel and unusual punishment, in violation of the Eighth Amendment to the United States Constitution.

After an independent and *de novo* review of the record, the undersigned concurs with the Magistrate Judge's Report and Recommendation. As discussed in <u>Wofford v. Scott</u>, 177 F.3d 1236, 1244 (11th Cir. 1999), and in the Magistrate Judge's Report, a motion under § 2255 is inadequate or ineffective, thus triggering the availability of § 2241 relief, only when a three-part test is met. When a prisoner's claim "1) [] is based upon a retroactively applicable Supreme Court decision; 2) the holding of that Supreme Court decision establishes the petitioner was convicted for a nonexistent offense; and 3)

circuit law squarely foreclosed such a claim at the time it otherwise should have been raised in the petitioner's trial, appeal, or first § 2255 motion[,]" then the prisoner may pursue relief under § 2241. Wofford, 177 F.3d at 1244. Coley fails to identify a new, retroactively applicable Supreme Court decision that establishes that he was convicted for a nonexistent offense or that he was foreclosed from raising these claims in his previously-filed motions.

Coley emphasizes that the § 2255 motion which he previously filed was improperly determined to be time-barred. The expiration of the § 2255 statute of limitations does not render § 2255's remedy inadequate or ineffective as to a petitioner's claims. See Wofford, 177 F.3d at 1244. Additionally, the validity of the decision regarding the timing of Coley's § 2255 motion is not before this Court.

Coley's Objections to the Magistrate Judge's Report and Recommendation are without merit and are **overruled**. The Report and Recommendation of the Magistrate Judge is adopted as the Opinion of the Court. Respondent's Motion to Dismiss is **GRANTED**. Coley's 28 U.S.C. § 2241 petition is **DISMISSED**. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 2 day of 2

, 2011.

LISA GODBEY WOOD, CHIEF JUDGE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF GEORGIA